

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 04-0186  
Sales and Withholding Tax  
Responsible Officer  
For the Tax Period 1995**

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**ISSUE**

**1. Sales and Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-2.5-9-3, IC 6-3-4-8(g), IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan, 654 N.E. 2d 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales and withholding taxes.

**STATEMENT OF FACTS**

The Indiana Department of Revenue, hereinafter referred to as the "department," assessed sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of a corporation that did not properly remit said taxes during the tax 1995 tax year. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

**1. Sales and Withholding Tax-Responsible Officer Liability**

**Discussion**

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against taxpayer pursuant to IC 6-3-4-8(g), which provides that “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2d 279 (Ind.1995) any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit sales and withholding taxes to the state.

The taxpayer submitted substantial documentation to demonstrate that he had no duty to collect and remit sales and withholding taxes to the state. Therefore, he is not personally responsible for the payment of the corporate sales and withholding taxes.

### **Finding**

The taxpayer’s protest is sustained.